

PLM 1

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-193566

PN

DATE: May 11, 1979

MATTER OF: Paul Borisuk, M.D. - Attorney Fees

DIGEST: VA employee claims reimbursement ^[Claim] for legal services ~~performed by his attorney~~ in sale of residence at old duty station. Charges for review of sales and purchase contracts, examination of abstract of title, reviewing of closing documents, and other similar services are advisory in nature and therefore, not reimbursable. Charges for preparation of conveyance instrument, preparation of certificate of abandonment, along with follow-up services, and preparation of closing reports may be reimbursed, provided such services customarily furnished by seller in locality of residence.

This action is in response to an appeal by Paul Borisuk, M.D., an employee of the Veterans Administration (VA), from the settlement action dated June 15, 1977, issued by our Claims Division, which disallowed a portion of the expenses incurred by Dr. Borisuk representing attorney's fees in connection with his permanent change of official station from Canandaigua, New York, to Mountain Home, Tennessee, in October 1972. AGC 00016

Pursuant to travel authorization dated October 3, 1972, Dr. Borisuk was transferred from VA Hospital, Canandaigua, New York, to VA Center, Mountain Home, Tennessee. In connection with his transfer, Dr. Borisuk sold two separate tracts of land at his old official station consisting of 8.5 and 3.6 acres of land. His principal residence and a barn located on the 8.5 acres were sold on January 12, 1973. The 3.6 acres and a barn were sold on December 15, 1972. Reimbursement for the expenses relating to the sale on January 12, including the attorney's fees in question, were allowed. However, reimbursement for the expenses relating to the sale on December 15 were disallowed by the VA, and sustained by the settlement action of our Claims Division of June 28, 1976, as the 3.6 acres had been separated from the 8.5 acres upon which the employee's residence was located and therefore did not reasonably relate to the residence site. Paragraph 2-6.1(f), Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973).

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The settlement action of June 28, 1976, also concluded that Dr. Borisuk was erroneously reimbursed for legal fees in the total amount of \$350 incident to the sale of the 8.5 acres of land. The VA was advised to begin appropriate collection action.

By memorandum dated October 29, 1976, Dr. Borisuk requested that a review be made of the overpayment. He submitted new evidence in support of reimbursement of the legal fees in question in the form of a letter dated January 12, 1973, from his attorney, which itemized, in pertinent part, the attorney fees of \$350, as follows:

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| 1. "Review of purchase and sale contract, obtain abstract of title and arrange redate there of | \$ 35.00 |
| 2. "Examination of abstract of title and review records of Hopewell Town Clerk on road abandonment; legal research on formalities of road abandonment; prepare certificate of road abandonment and review same with County Highway Department and present to Hopewell Town Board and obtain signing and file with Town Clerk | 140.00 |
| 3. "Prepare instrument of conveyance | 30.00 |
| 4. "Obtain closing and tax figures and compute tax adjustments | 20.00 |
| 5. "Obtain amount to discharge mortgage and obtain discharge instrument and review same and arrange mortgage payoff | 35.00 |
| 6. "Arrange closing for transfer and compute amounts due disbursements | 25.00 |
| 7. "Prepare figures for closing; complete review of all closing documents and instruments; arrange further abstract continuance and review results thereof; prepare closing report | 65.00 |
| | <u>\$350.00"</u> |

(Numbering supplied for clarity.)

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In submitting the itemization of legal services to this Office for consideration, the Office of Controller, VA, stated it was their belief that all of the listed services are reimbursable and requested that our Claims Division reconsider that portion of the settlement action of June 28, 1976, relating to legal fees incurred incident to the sale of the claimant's former residence at his old duty station. As of April 5, 1977, the full amount of the indebtedness of \$350 was outstanding.

Upon examination of the itemized list of legal expenses, the Claims Division, in its settlement action of June 15, 1977, determined that only \$115 of the total \$350 attorney fees is reimbursable. It was stated that the remaining items represented counseling and advisory services rendered to the employee. Reimbursement of the remaining portion of the legal expenses in the sum of \$235 was determined to have been erroneously paid to Dr. Borisuk and accordingly, he was held to be indebted to the United States for that amount. The VA was advised to commence appropriate collection action.

In appealing that determination, Dr. Borisuk contends that the legal fees as itemized by his attorney closely conform to those listed in section 2 of the FTR. Additionally, he points out that none of the itemized services were of a counseling or advisory nature since none required communication at any time between his attorney and himself. He states the legal services were of such nature that they simply had to be performed to meet the legal requirements for the sale of the property and that none were optional and could not have been omitted.

The statutory authority for reimbursement of the expenses of residence transactions of transferred employees is found in 5 U. S. C. § 5724a (1970). The implementing regulations governing the reimbursement of legal expenses incurred in the sale and purchase of residences of Federal employees at their old and new permanent duty stations are contained in paragraph 2-6.2c of the FTR and provide as follows:

"Legal and related expenses. To the extent such costs have not been included in brokers' or similar services for which reimbursement is claimed under other categories, the following expenses are reimbursable with respect to the sale and purchase of

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residences if they are customarily paid by the seller of a residence at the old official station or if customarily paid by the purchaser of a residence at the new official station, to the extent they do not exceed amounts customarily charged in the locality of the residence: costs of (1) searching title, preparing abstract, and legal fees for a title opinion or (2) where customarily furnished by the seller, the cost of a title insurance policy; costs of preparing conveyances, other instruments, and contracts and related notary fees and recording fees; costs of making surveys, preparing drawings or plats when required for legal or financing purposes; and similar expenses. Costs of litigation are not reimbursable."

In the first decision of this Office, B-161891, August 21, 1967, in which we interpreted the above-quoted regulation, we considered the question of whether an employee should be reimbursed for services rendered by an attorney in ascertaining the propriety of the terms of a contract of sale and other instruments, and examining the title papers and preparing a title opinion letter. Under the predecessor regulation to paragraph 2-6.2c, FTR, we found these services to be advisory in nature and distinguished them from the searching of title and the preparation of the purchase contract. We stated that:

"Such services while stemming from prudence on the part of the employee are, in our opinion, not to be considered as normal or usual expenses incident to the purchase or sale of moderately priced residential housing and, therefore, not reimbursable expenses within the guidelines of section 4.2c, referred to above. * * *"

Based upon this rationale, it has been consistently held by this Office that the purpose of the regulation is not that of authorizing reimbursement of fees of attorneys retained to counsel and represent employees and negotiate on their behalf in connection with real estate transactions. Rather, the regulation authorizes reimbursement for the expenses of the specific legal services described without regard to whether they are performed by attorneys, brokers, title companies, or others. 48 Comp. Gen. 469 (1969);

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Matter of John O. Border, B-184599, September 16, 1975; Matter of Thomas A. McDonnell, B-183443, July 14, 1975; B-179482, March 21, 1974; and B-175328, September 21, 1972.

In its settlement action of June 15, 1977, the Claims Division allowed items 3, 4, and 7. While we concur that item 3, which was the preparation of an instrument of conveyance (\$30), is for allowance, the services rendered in item 4, obtaining closing and tax figures and computing tax adjustments, are advisory in nature and are not the type of services enumerated in paragraph 2-6.2c. Hence, the legal services in item 4 should not have been allowed.

Similarly and with respect to items 1, 5, and 6, the legal services rendered by the attorney in the sale of the 8.5 acres of land which included the employee's residence, appear to be purely advisory in nature and are not reimbursable. Again, only attorney's fees that represent services of the type enumerated in paragraph 2-6.2c are reimbursable. 48 Comp. Gen. 469, supra; B-183433, supra; B-179482, supra; B-178008, April 18, 1973; B-175328, supra; B-175710, July 17, 1972; B-173222, August 10, 1971; B-169621, June 25, 1970; B-163690, March 29, 1968; and B-161891, supra. As to the closing or settlement transaction involving real estate, services performed by an attorney are reimbursable only if the attorney conducts the settlements. B-183443, supra.

With respect to items 2 and 7, services performed in the "Examination of abstract of title and review records of Hopewell Town Clerk on road abandonment; legal research on formalities of road abandonment * * *" and "Prepare figures for closing; complete review of all closing documents and instruments; arrange further abstract continuance and review results thereof;" are also of an advisory nature and not reimbursable. However, the preparation of the certificate of road abandonment, presentation of the instrument for county officials, and obtaining signing thereof and filing with the Town Clerk; and preparing the closing report, are the type of services enumerated in paragraph 2-6.2c, FTR, and if customarily furnished by the seller in the Canandaigua, New York, area, are for reimbursement.

In our decision, Matter of George W. Lay, 56 Comp. Gen. 561 (1977), recognizing that since the time of our earlier decisions, the law, regulations, and practices governing real estate transactions

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have grown more complex, we reviewed our policy regarding the extent to which legal fees may be reimbursed. In that decision we held that necessary and reasonable legal fees and costs, except for the fees and costs of litigation, incurred by reason of the sale or purchase of a residence incident to a permanent change of station may be reimbursed, provided that such costs are within the customary range of charges for such services within the locality of the residence transaction. However, the Lay decision is only to be applied prospectively to cases in which settlement of the transaction occurs on or after April 27, 1977. Inasmuch as the sale of Dr. Burisuk's residence at his old duty station occurred prior to our decision in Lay, the present case is for determination in accordance with the interpretation enunciated in our earlier decisions. Matter of Robert C. Manning, B-192472, March 21, 1979; Matter of Manuel L. Goodwin, B-192593, January 16, 1979.

However, ^{as} the items in question have previously been allowed by either the Veterans Administration or our Claims Division. and There is no evidence of record which indicates any factors which would require disallowance under the ~~Lay~~ decision if the items ^{current} were incurred today. In the circumstances, we do not believe further collection action is warranted.

R. J. K. 11/12

Deputy Comptroller General
of the United States